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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
09/227,749	01/08/99	BALIN	B 10062-1

EXAMINER

HM12/0122

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PESELEV, E

ART UNIT

PAPER NUMBER

1623

16

DATE MAILED 1/22/01

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 12/8/00

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-17 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
☐ Claim(s) _____ is/are allowed.
☒ Claim(s) 1-17 is/are rejected.
☐ Claim(s) _____ is/are objected to.
☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
☐ The specification is objected to by the Examiner.
☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.
☐ received in Application No. (Series Code/Serial Number) _____
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
☐ Interview Summary, PTO-413
☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

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Claims 18-30 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to a non-elected invention. Election was made **without** traverse in Paper No. 5.

Applicant's election without traverse of Group I, claims 1-17, species macrolide in Paper No. 5 is acknowledged.

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shor et al (U.S. Patent No. 5,424,187) in combination with Koskiniemi et al (Eur Neurol 1996; 36:160-163).

Shor et al disclose the use of a macrolide alone or in combination with an antiinflammatory agent for the treatment of Chlamydia pneumoniae infection (column 2, lines 67-68 and column 3, lines 1-10) but do not disclose the treatment of said infection in central nervous system (CNS). However, since Koskiniemi et al disclose Chlamydia pneumoniae infections associated with CNS, a person having ordinary skill in the art at the time the instant invention was made would have been motivated to treat any disease which involves infection by C. pneumoniae of CNS with a macrolide or a macrolide in combination with an antiinflammatory agent because the results obtained from such treatment would have been expected.

Applicant's arguments filed December 8, 2000 have been fully considered but they are not persuasive.

Since Chlamydia pneumoniae infections of CNS were well known in the art at the time of the instant invention as disclosed by Koskiniemi et al, a person having ordinary skill in the art at the time the instant invention was made would have been motivated to treat said infections with antibiotics which are known to have activity against Chlamydia pneumoniae.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elli Peselev whose telephone number is (703) 308-4616. The examiner can

normally be reached on Monday to Friday from 9.00 a.m. to 6.00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Geist, can be reached on (703) 308-1701. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

elli peselev
**ELLI PESELEV
PRIMARY EXAMINER
GROUP 1200**